

E-Filed 09/17/2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THOMAS O. MORRIS,

No. C 10-3468 RS

Plaintiff,

ORDER GRANTING REMAND

v.

CROWN CORK & SEAL COMPANY, INC.
et al.,

Defendants.

Plaintiff Thomas Morris filed a complaint in the Superior Court of California, County of San Francisco on June 29, 2010, alleging asbestos-related injuries against various defendants, including Foster Wheeler LLC. Foster Wheeler filed its Notice of Removal with this Court on August 9, 2010, claiming federal officer jurisdiction pursuant to 28 U.S.C. § 1442(a)(1). Specifically, Foster Wheeler alleged that it has a colorable military contractor defense to Morris' claims. No other parties have joined in the removal or asserted removal on any other grounds. On August 12, 2010, Morris voluntarily dismissed his complaint against Foster Wheeler. Morris then filed his motion to remand on August 19, 2010. No opposition to the motion to remand has been filed.

In cases removed pursuant to § 1442(a)(1), "[i]f the federal party is eliminated from the suit after removal... the district court does not lose its... jurisdiction over the state law claims against

1 the remaining non-federal parties.”” *Spilmon v. Allis-Chalmers Corp. Prod. Liability Trust et al*,
2 No. C-08-4873 (MCC), 2008 WL 5250472 at *1 (N.D. Cal. Dec. 17, 2008) (citing *Dist. of*
3 *Columbia v. Merit Sys. Prot. Bd.*, 762 F.2d 129, 132-33 (D.C.Cir.1985). Rather, the district court
4 retains the discretion to hear the underlying state law claims or to remand the case to state court.
5 *See id*; *see also Swett v. Schenk*, 792 F.2d 1447, 1450 (9th Cir.1986).

6 Here, given the early stage of the proceedings and with no federal claims alleged, no
7 defendant other than Foster Wheeler having appeared in this Court, and no opposition to the motion
8 to remand, the Court remands the action to state court. Additionally, the matter is appropriate for
9 resolution without oral argument pursuant to Civil Local Rule 7-1(b) and the motion hearing set for
10 **September 23, 2010** is vacated.

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12 IT IS SO ORDERED.

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14 Dated: 09/17/2010



15 RICHARD SEEBORG
16 UNITED STATES DISTRICT JUDGE
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